

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California

Date: May 25, 2006

Resolution No. L-332

RESOLUTION

**RESOLUTION AUTHORIZING DISCLOSURE OF CERTAIN
COMMISSION CONSUMER SERVICES DIVISION (UTILITIES SAFETY
BRANCH) GAS INCIDENT REPORTS, GAS INCIDENT
INVESTIGATION RECORDS, QUARTERLY SUMMARY REPORTS,
SAFETY CONDITION REPORTS, AND COMPLAINT RECORDS,
PURSUANT TO PUBLIC RECORDS ACT REQUEST BY JENNIFER S.
DOMINTZ, SENIOR MEDIA COUNSEL, NBC UNIVERSAL
TELEVISION GROUP, ON BEHALF OF ITS SUBSIDIARY, KNBC-TV.**

BACKGROUND

In December, 2005, NBC Universal Television Group Subsidiary KNBC-TV (KNBC) requested the following California Public Utilities Commission (Commission) records:

1. “‘Gas Incident reports,’ ‘Utility Quarterly Reports,’ ‘Safety Related Condition reports’ for Southern California Gas and Southern California Edison for 2003 and 2004 and any available for 2005” and
2. “All consumer complaints for 2004 and those available for SCG and SCE about gas leaks.”

Commission staff sent the requested complaint records, with personal information such as individual complainant names, telephone numbers, and utility account numbers redacted in the interest of customer privacy. Commission staff provided a number of records and electronic links responsive to the records request. In a subsequent letter, NBC Universal states:

“Your letter includes a link to the California Incidents Listing. While that link provides helpful general information, KNBC is seeking the specific underlying data for that

summary listing, including the actual files, logs, field notes, correspondence, telephonic reports, and documents relating to the cost of repairs, payouts, and fines. The station is most interested in the documents relating to the following entries on the summary listing:

2004: # 3 2004/05/20 Garden Grove
4 2004/08/19 El Monte

2003: # 1 2003/03/17 Pasadena
1 2003/01/07 Anaheim

2002: # 5 2002/08/13 Torrance.

Moreover, the California Incident listing does not include any 2005 information; thus, we would appreciate your promptly providing us separately responsive 2005 documents.

In addition, with respect to the Written Incident Reports, your letter – which states that ‘most Commission decisions [must] be circulated in draft form for public comment at least 30 days before the Commission takes formal action’ – is not clear whether a 30-day comment period is actually required by any law or regulation before these documents can be disclosed. Thus, please provide us with any relevant authority supporting your position on that point.

Further, I note that KNBC has also asked for Quarterly Summary Reports (Section 122.2 (d) of the General Order) and Safety-Related Condition Reports (Section 124 of the General Order). Neither of these categories of documents is deemed confidential by the General Order (unlike the Written Incident Reports); thus, we do not understand why they cannot be provided immediately (even with redactions that the PUC believes are appropriate).

Additionally, with respect to the consumer complaint document enclosed with your letter, KNBC strongly disagrees with the propriety of the redactions that have been made. Consumers made these complaints to a public agency; thus, the complainants’ names and telephone numbers clearly are not the kind of information, the disclosure of which would constitute an ‘unwarranted invasion of personal privacy.’

KNBC has been informed that the PUC has no documents relating to a gas leak and explosion on November 8, 2005 in Mira Loma. Given that the PUC requires gas companies to report on such matters (see Sections 121 and 122 of the General Order), please confirm that this is the case. The exact address is 5760 Lucretia Avenue, Mira Loma, CA 91752.

Finally, with this letter, KNBC: (1) supplements its prior requests by requesting Leakage Survey and Procedures (Section 143.1 of the General Order) for 2003 through 2005 for the greater Los Angeles area; and (2) requests an on-camera interview early next week with a PUC gas leak expert from the PUC's LA Public Safety Branch. With respect to the latter, please have the appropriate person respond directly to Ms. Garcia."

DISCUSSION

The requested records are "public records" as defined by the California Public Records Act (PRA). (Government Code § 6250 et seq.) The California Constitution, PRA, and discovery law, favor disclosure of public records. The public has a constitutional right to access government information. (California Constitution, Article 1, § 3 (a).) Statutes, court rules, and other authority limiting access to information must be broadly construed if they further the people's right of access, and narrowly construed if they limit the right of access. (California Constitution, Article 1, § 3 (b)(2).) New statutes, court rules, or other authority that limit the right of access must be adopted with findings demonstrating the interest protected by the limitation and the need to protect that interest. (Id.)

The PRA provides that an agency must base a decision to withhold a public record in response to a PRA request upon the specified exemptions listed in the Act, or a showing that, on the facts of a particular case, the public interest in confidentiality clearly outweighs the public interest in disclosure.¹

The Commission has exercised its discretion under Public Utilities Code § 583, and implemented its responsibility under Government Code § 6253.4 (a), by adopting guidelines for public access to Commission records. These guidelines are embodied in General Order 66-C. General Order 66-C § 1.1 provides that Commission records are

¹ The fact that records may fall within a PRA exemption does not preclude the Commission from authorizing disclosure of the records. Except for records which may not be disclosed by law, PRA exemptions are discretionary, rather than mandatory, and the Commission is free to refrain from asserting such exemptions when it finds that disclosure is appropriate. See Government Code § 6253 (e); *Black Panthers v. Kehoe* (1974) 42 Cal. App.3d 645, 656.

public, except “as otherwise excluded by this General Order, statute, or other order, decision, or rule.” General Order 66-C, § 2.2 precludes staff’s disclosure of “[r]ecords or information of a confidential nature furnished to or obtained by the Commission ... including: (a) Records of investigations and audits made by the Commission, except to the extent disclosed at a hearing or by formal Commission action.” Section 2.2 (a) covers both records provided by utilities in the course of a Commission investigation and investigation records generated by Commission staff.

The gas incident records that Commission staff refrained from providing to KNBC in its initial response to KNBC’s records request fall within scope of records of investigations made by the Commission, and thus could not be disclosed to the public without formal Commission action. Public Utilities Code § 311 (g) requires that most Commission decisions be circulated for public comment at least 30 days before they are formally voted on by the Commission. (*See also*, Article 19 of the Commission’s Rules of Practice and Procedure.) As the requester notes, disclosure of such records, in the absence of Commission action, is also limited by General Order 112-E § 122.

Because General Order 66-C § 2.2 (a) and General Order 112-E § 122 limit staff’s ability to disclose Commission gas incident investigation records in the absence of disclosure during a hearing or a Commission order authorizing disclosure, staff denies most initial requests for such records. Staff usually informs requesters of the option under General Order 66-C § 3.4 to appeal to the Commission for disclosure of the records. If an appeal is received, staff prepares a draft resolution for the Commission’s consideration. KNBC’s subsequent request includes what amounts to an appeal to the Commission for disclosure.

There is no statute forbidding disclosure of the Commission’s safety investigation records. During the past twelve years the Commission has ordered disclosure of records concerning completed safety incident investigations on numerous occasions.² Disclosure does not interfere with its investigations, and may lead to discovery of admissible evidence and aid in the resolution of litigation regarding the accident/incident under investigation.³ Most of these resolutions responded to disclosure requests and/or subpoenas from individuals involved in electric or gas utility incidents (accidents), the families of such individuals, the legal representatives of such individuals or families, or the legal representatives of a defendant, or potential defendant, in litigation related to an accident/incident.

² Where appropriate, the Commission has redacted portions of investigation records which contain confidential personal information, the disclosure of which would constitute an unwarranted invasion of privacy, and other exempt or privileged information.

³ *See, e.g.* Commission Resolutions L-240 *Re San Diego Gas & Electric Company*, rehearing denied in D.90-05-020 (1993), 49 CPUC 2d 241; L-309 *Re Corona* (December 18, 2003); and L-320 *Re Knutson* (August 25, 2005).

The Commission has often stated that Public Utilities Code § 315, which expressly prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, “as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property,” offers utilities sufficient protection against injury caused by the release of requested investigation records.

Portions of incident investigation records which include personal information may be subject to disclosure limitations in the Information Practices Act (IPA) (Civil Code § 1798 et seq.). However, the IPA authorizes disclosure of personal information “Pursuant to the California Public Records Act.” (Civil Code § 1798.24 (g).) Incident records may include personal information concerning utility employees involved in, investigating, or reporting the incident, Commission employees investigating the incident, employees of other governmental agency investigating the incident, the injured individual, members of his or her family, if he or she is deceased, and any witnesses to the incident.

The Commission generally finds that the public interest favors disclosure of such information, where it is associated with a completed incident investigation, with the exception of personal information concerning the family of a deceased individual, or witnesses not associated with the utility, the Commission, or the injured or deceased individual’s employer. Personal information concerning such family members or other witnesses may be redacted in the interests of privacy. Disclosure of such information may constitute an unwarranted invasion of personal privacy. Thus, such information is exempt from mandatory disclosure in response to a PRA request, pursuant to Government Code § 6254 (c).

Whether disclosure of gas incident witness names, addresses, and telephone numbers to the public would constitute an unwarranted invasion of personal privacy is not always an easy determination. The California Constitution provides state residents with a number of inalienable rights, which include “pursuing and obtaining safety, happiness, and privacy.” (California Constitution, Article 1, § 1.) This right of privacy was not diminished by the recent amendments to Article 1, § 3, which strengthened the public’s right of access to government records. (California Constitution, Article 1, § 3 (b)(3).)

The Constitutional right of privacy is not absolute, and must yield to other public interests in appropriate circumstances. In some circumstances somewhat similar to those presented by the current records request, the Legislature has seen fit to provide limited, rather than universal, access to witness information. For example, Vehicle Code § 20012 provides that all required accident reports shall be for the confidential use of the Department of Motor Vehicles and the California Highway Patrol, but requires that such reports, including the names and addresses of persons involved or injured in, or witness

to, an accident, be made available to any person with a proper interest therein, including those involved in the incident and those who may incur civil liability.

Most of the records requests and subpoenas the Commission receives which seek accident/incident investigation records come from individuals or entities with either a strong emotional or financial interest in the investigation records. People injured in accident, and/or the families of those killed in such accidents, have an emotional (and sometimes financial) interest in the records. Entities involved in, or potentially involved in, litigation associated with such accidents have a strong financial interest in investigation records. On rarer occasion, members of the media seek investigation records.

One may reasonably assume that there is some lessening of the objectively reasonable expectations of privacy held by those identified as witnesses in Commission incident investigation records. After all, the individuals know they have been interviewed by Commission staff, employees of other governmental agencies, employees of the utility whose facilities were involved in the incident, and so on, and therefore probably anticipate they might be interviewed again by those with a direct interest in the incident.

It is not as reasonable to assume that the fact that an individual has been interviewed by those with direct interests in an incident means that the individual should be held to reasonably expect that his or her name, address, and telephone number will be made public in response to a records request from a member of the media or otherwise. The simple truth is that some witnesses may anticipate, or perhaps even welcome, interviews by members of the media, while others reasonably anticipate that the government employees or others who have already interviewed them in connection with the incident will respect their right to privacy – which has sometimes been described as including the basic right to be left alone. This is probably especially true for those who have been injured, or those with family members who have been injured or killed, in utility incidents.

The Commission's widespread distribution of personal information concerning incident victims and witnesses to the media in response to Public Records Act requests – which then makes that same information available to anyone filing a similar request (Government Code § 6254.5) - lacks appeal. Members of the media are not universally noted for their sensitive treatment of those who have lost loved ones in utility incidents or similar events. Further, fears of identity theft are increasingly widespread.

We will authorize staff to disclose gas incident investigation records requested by KNBC, after redacting the names, addresses, and telephone numbers of family of a deceased individual, or party witnesses not associated with the utility, the Commission, or the injured or deceased individual's employer. At this time, KNBC has identified five

incidents it is especially interested in, and one additional incident it claims it was told we have no record of. Further review has located information regarding this sixth gas incident (Mira Loma, November 8, 2005), which will be included in the records staff will provide to KNBC.

Regarding the confidentiality of personal information in complaint files, we note that there are two basic classes of complaint files, formal complaint files, which have long been open for public inspection in the Commission's Central Files Office, and informal files, which are generally made available in summary electronic format, with personal information concerning complainants' redacted in the interest of privacy. The Commission recognizes that some informal complainants might be happy to have their names, addresses, account numbers, financial status, and similar information made available to any member of the public who requests it, while others might be more reluctant to share such details of their lives with the media, or other members of the public. The fact that a person files an informal complaint with a state agency - this Commission - does not in our view constitute an open invitation to the world to view the complainants' personal information. (*See, e.g., City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008.)

Commission staff has, on rare occasions, agreed to act as a limited intermediary between those wishing to contact individuals who have filed informal complaints and the informal complainants themselves. If KNBC drafts a form letter explaining its interest in contacting complainants and inviting them to contact KNBC, and provides postage, Commission staff will forward the form letter to a limited number of complainants for which the Commission has adequate contact information so that those individuals may, if they wish, contact KNBC. This approach may help satisfy KNBC's desire for information while leaving it up to individual complainants, rather than KNBC, to decide whether their personal information should be made public. Because the task of locating complainant names and addresses, and addressing envelopes, is not within staff's normal duties, and does not especially further the Commission's implementation of its regulatory responsibilities, we will permit KNBC to select no more than 20 complainants it is interested in contacting. Staff has already provided summary complaint information that should allow KNBC to identify a group of potential interviewees. Staff will also provide this service with regard to any individuals whose personal information is redacted from the incident records that will be provided to KNBC in response to its follow-up information request.

KNBC correctly notes that neither Quarterly Summary Reports (General Order 112-E § 122.2 (d)) nor Safety-Related Condition Reports (General Order 112-E § 124) are deemed confidential by General Order 112-E. Several utilities, however, identify such reports as confidential. We find no public interest served by keeping such information from the public. We take this opportunity to remind utilities that General Orders which

require utilities to report to the Commission do not provide that such information will be confidential unless specific provisions of the General Orders identify specific information as confidential. The California Constitution, Article 1, § 3 (b)(2), requires that a “statute, court rule, or other authority, ... shall be broadly construed if furthers the people’s right of access, and narrowly construed if it limits the right of access.

As requested, staff will provide information regarding General Order 112-E § 143.1 leakage surveys and procedures.

The California Incident Listing to which KNBC’s follow-up request refers, for which KNBC seeks 2005 information, was a product of the United States Department of Transportation Office of Pipeline Safety, rather than this Commission. We are not in charge of that agency’s internet site, and thus cannot provide the requested 2005 data. We can, and did, provide summary gas leak information prepared by the Commission’s Consumer Affairs Branch

COMMENTS ON DRAFT RESOLUTION:

The Draft Resolution of the Legal Division in this matter was mailed to the parties in interest on April 25, 2006, in accordance with Public Utilities Code § 311(g). Comments were filed by _____ on _____.

FINDINGS OF FACT

1. KNBC is seeking investigation records concerning a number of gas incidents in the greater Los Angeles area during 2003, 2004 and 2005. KNBC has specified 6 specific incidents it is particularly interested in.
2. KNBC has also asked for Quarterly Summary Reports required by General Order 112-E §122.2 (d) and Safety-Related Condition Reports required by General Order 112-E § 124. Neither of these categories of documents is deemed confidential by the General Order (unlike the Written Incident Reports).
3. Commission staff has, on rare occasions, agreed to act as a limited intermediary between those wishing to contact individuals who have filed informal complaints and the informal complainants themselves. If KNBC drafts a form letter explaining its interest in contacting complainants and inviting them to contact KNBC, and provides postage, Commission staff could forward the form letter to a limited number of complainants for which the Commission has adequate contact information so that those individuals may, if they wish, contact KNBC. This approach may help satisfy KNBC’s desire for information while leaving it up to individual complainants, rather than KNBC, to decide whether their personal information should be made public.

4. The task of locating complainant names and addresses, and addressing envelopes, is not within staff's normal duties, and does not especially further the Commission's implementation of its regulatory responsibilities; therefore, it is reasonable to permit KNBC to select no more than 20 complainants it is interested in contacting. Staff has already provided summary complaint information that should allow KNBC to identify a group of potential interviewees.
5. To the extent that the Commission's investigations of the gas incidents KNBC is interested in have been completed, the disclosure of the investigation records would not compromise the investigations.
6. The public interest favors disclosure of the requested investigation records, with the exception of the names, addresses, and telephone numbers of family of a deceased individual, or witnesses not associated with the utility, the Commission, or the injured or deceased individual's employer.

CONCLUSIONS OF LAW

1. The documents in the requested investigation file and report are public records as defined by Government Code § 6250 et seq.
2. The California Constitution favors disclosure of governmental records by, among other things, stating that the people have the right of access to information concerning the conduct of the peoples' business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. Furthermore, the California Constitution also requires that statutes, court rules, and other authority favoring disclosure be broadly construed, and that statutes, court rules, and other authority limiting disclosure be construed narrowly; and that any new statutes, court rules, or other authority limiting disclosure be supported by findings determining the interest served by keeping information from the public and the need to protect that interest. California Constitution, Article 1, § 3 (b) (1) and (2).
3. The general policy of the Public Records Act favors disclosure of records.
4. Justification for withholding a public record in response to a Public Records Act request must be based on specific exemptions in the Public Records Act or upon a showing that, on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure. (Government Code § 6255.)
5. The Commission has exercised its discretion under Public Utilities Code § 583 to limit staff disclosure of investigation records in the absence of formal action by the Commission or disclosure during the course of a Commission proceeding. (General Order 66-C § 2.2 (a).)

6. Public Utilities Code § 583 does not limit the Commission's ability to order disclosure of records.
7. Public Utilities Code § 315 prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, "as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property."
8. Public Utilities Code § 311 (g) requires that most Commission decisions be circulated for public comment at least 30 days before they are formally acted on by the Commission.
9. Public disclosure of the portion of gas incident records that include names, addresses, and telephone numbers of family of a deceased individual, or third party witnesses not associated with the utility, the Commission, or the injured or deceased individual's employer, would constitute an unwarranted invasion of personal privacy. Such information is, therefore, exempt from mandatory disclosure in response to Public Records Act requests, pursuant to government Code § 6254 (c).

ORDER

1. KNBC's request for disclosure of the Commission's records concerning the investigations of certain gas incidents in the greater Los Angeles area is granted, with minor limitations to protect the privacy of certain individuals.. Staff will disclose gas incident investigation records requested by KNBC, after redacting the names, addresses, and telephone numbers of family of a deceased individual, or witnesses not associated with the utility, the Commission, or the injured or deceased individual's employer.
2. If KNBC drafts a form letter explaining its interest in contacting complainants and inviting them to contact KNBC, and provides postage, Commission staff will forward the form letter to a limited number of complainants for which the Commission has adequate contact information so that those individuals may, if they wish, contact KNBC. Staff will extend the same service with regard to individuals whose personal information has been redacted from incident investigation records.
3. Staff will provide KNBC with copies of available Quarterly Summary Reports required by General Order 112-E §122.2 (d) and Safety-Related Condition Reports required by General Order 112-E § 124.

4. The effective date of this order is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of May 25, 2006 and that the following Commissioners approved it:

STEPHEN LARSON
Executive Director